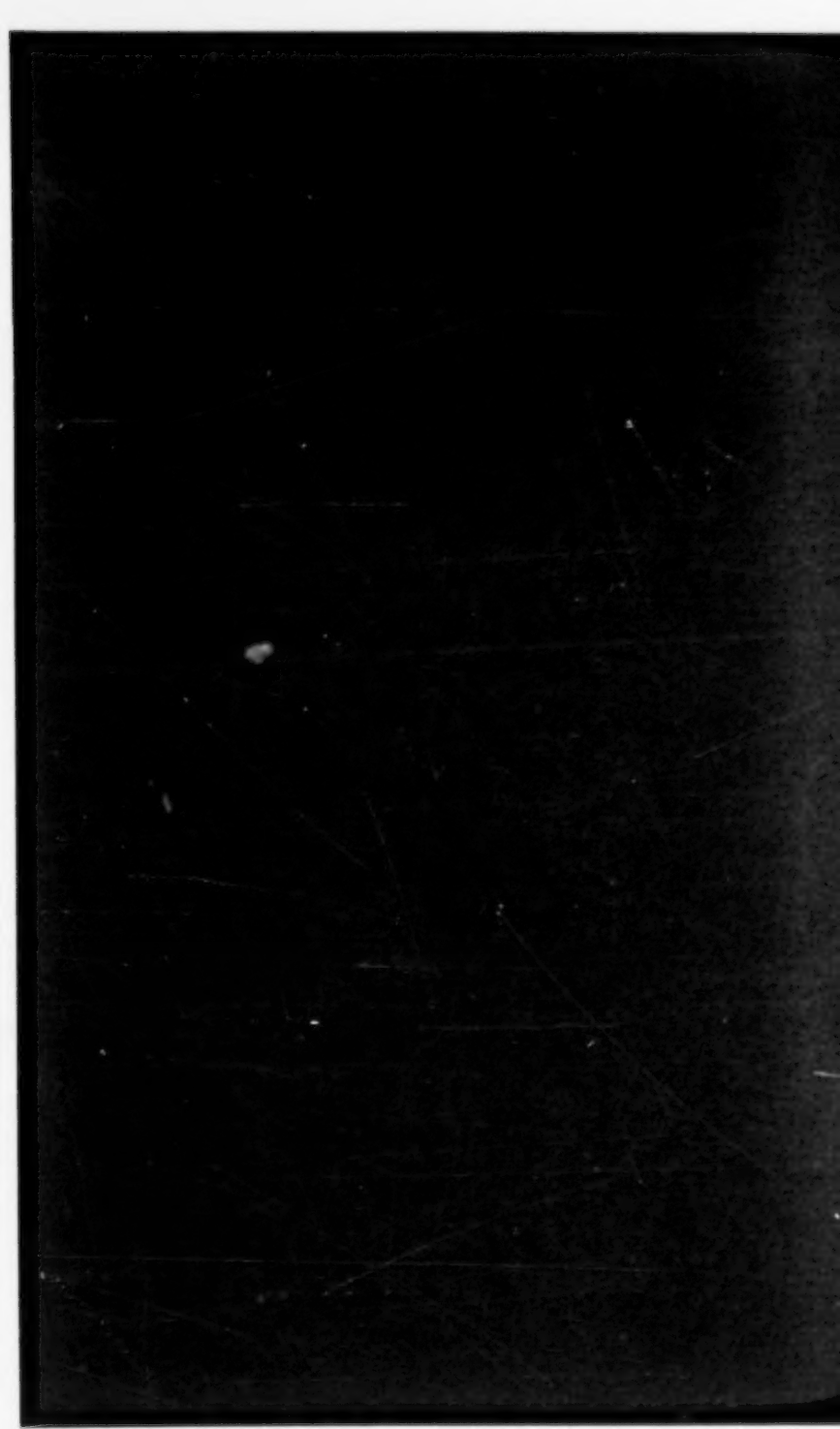

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AUTHORITIES.

In the Supreme Court of the United States

October Term, A. D. 1924.

STATE OF ARKANSAS, EX REL., J. S. UTLEY, Attorney General of the State of Arkansas, for the Use and Benefit of Craighead County, Arkansas, *Petitioners.*

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and MISSOURI-PACIFIC RAILROAD COMPANY, *Respondents.*

No. 410.

BRIEF FOR PETITIONERS.

Petition for Writ of Certiorari, requiring the Supreme Court of Arkansas, to certify to the Supreme Court of the United States for its review and determination the case of State of Arkansas, ex rel., J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, Appellant, v. St. Louis-San Francisco Railway Company and Missouri-Pacific Railroad Company, Appellees.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petition of the State of Arkansas, ex rel., J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, for a writ of certiorari for the purpose of reviewing the final judgment of the Supreme Court of the State of Arkansas (being the highest court in that State in which a decision in this suit could be had), where petitioner specially set up and claimed a title, right and privilege under the Constitution, and statutes of the United States and under an authority of the United States, to-wit: The due force and effect and full faith and credit that should be given by a State Court to a judgment of the District Court of the United States in mandamus, respectfully shows to the court:

Nature of the Case.

1. **The Federal Order of Mandamus.** In a suit in which it had jurisdiction on account of diversity of citizenship, the Federal District Court, on county warrants payable solely out of the county general tax, rendered a judgment at law for $77,680.00 against Craighead County in favor of the Maccabees, a Michigan fraternal order. This was followed by a mandamus proceeding in which, after due service of summons on the assessing authorities as defendants, the following order was made:

> "* * * It is ordered, considered and adjudged that a mandamus issue, requiring the defendants to assess at its full value in money

all property in Craighead County, and to continue said assessment at its full value in money until the judgment of the plaintiff herein for $77,680.00 and costs shall have been paid in full; and it appearing that the property in said county has heretofore been assessed at not exceeding 50 per cent of its assessed value, it is ordered that said mandamus require that the total assessment made hereunder shall be at least double the amount of the total assessment heretofore made. It is further ordered that service of a copy of this order be deemed a sufficient service of the mandamus."

2. **Assessment Under Mandamus.** By order of the State Tax Commission all property in Arkansas is usually assessed at fifty per centum of true value. But, in the taxing years 1921 and 1922, pursuant to the Federal mandamus, taxable property in Craighead County was assessed at one hundred per centum of true value for county general purposes, and at fifty per centum of true value for other purposes, namely, State, municipal and school taxes. All taxes were paid on these assessments, except by the railroads sued here.

3. **This Suit.** On July 19, 1923, separate suits were filed against the two railroads, in the Chancery Court for the Western District of Craighead County, Arkansas, under the provisions of the Corporation Overdue Tax Law (Crawford & Moses' Digest of the Statutes of Arkansas, 10204-10214) for county general taxes aggregating $26,-820.94, plus penalty, interest and costs. The Arkansas Corporation Overdue Tax Law (C. & M.

D., 10208) provides that in suits brought under it new assessments may be made if there be no assessment or the old one be defective. These railroads had paid all taxes assessed on a fifty per centum basis. The two suits were consolidated.

4. **The Defense.** The railroads relied on three propositions: First, that the mandamus order of the Federal Court, though never appealed from and standing unreversed, was null and void as beyond the jurisdiction and power of the Federal Court, and, secondly, that if the order was valid, the assessment should have been made at one hundred per centum for all purposes, and not solely for county general purposes; and, thirdly, that the Arkansas Tax Commission had not in fact made a full value assessment as against the railroads for the year 1921.

5. **Holding of Arkansas Supreme Court.** Upon appeal to it the Supreme Court of Arkansas held that the Federal Court had jurisdiction and power to render the order of mandamus, but denied a recovery against the defendants: First, on the ground that the proper construction of the Federal order of mandamus required that the assessment be placed at full value for all the taxes as well as for county general taxes; secondly, that the Arkansas Tax Commission had not in fact made a full value assessment of railroads for the year 1921; and thirdly, that no new assessment could be made under the Corporation Overdue Tax Law for the reason that under such law a Federal judgment has no force or effect.

Legal Propositions Here Involved.

6. As there are no disputes about the facts, the only questions here involved are questions of law. We submit that the Supreme Court of Arkansas has denied full force and effect to the Federal judgment in mandamus in the following particulars:

First: In misconstruing the Federal mandamus by holding that it requires a full value assessment to be made for all taxing units as well as the county against which alone the Federal judgment was obtained.

Second: In misapplying its own interpretation of the mandamus by holding that a failure to make a full value assessment for other taxing units invalidated a full value assessment for the county, which would have been placed at full value in any event.

Third: In refusing to give said judgment any effect whatever as establishing a right to collect taxes under the Arkansas Corporation Overdue Tax Law.

The Misconstruction of the Federal Mandamus.

7. **Conflict Between Federal and State Courts.** The right of a creditor of a county to secure by mandamus against the assessing authorities a full value assessment of property for taxation has been the source of much conflict between the lower Federal Courts and the Supreme Court of Arkansas. In *United States* v. *Jimmerson* (1915), 222

Fed. 489, the Circuit Court of Appeals for the Eighth Circuit held that such a mandamus would lie. In *State* v. *Meek* (1917), 127 Ark. 349, the Supreme Court of Arkansas held otherwise. Followed in *Eureka Fire Hose Mfg. Co.* v. *Deffenbaugh,* (1917) 129 Ark. 41; *Dickinson* v. *Housley,* (1917) 130 Ark. 259. In *United States* v. *Cargill,* (1920) 263 Fed. 856, the Circuit Court of Appeals for the Eighth Circuit held that, notwithstanding the intervening Arkansas decisions, it would still grant a writ of mandamus to a creditor holding county obligations issued prior to the date of the State decision in *State* v. *Meek, supra.* In the instant case the county warrants sued upon were issued in 1916 and the Federal District Court followed the *Cargill* case in granting the mandamus.

8. **Interpretation of Arkansas Supreme Court.** In interpreting the mandamus the Supreme Court of Arkansas says:

> "The judgment directed that the assessing officers of the county 'assess at its full value, in money, all property in Craighead County.' This does not specify the mode of assessment, and that is left to the operation of the State laws as construed by this court."

The court then holds that under the State laws, as interpreted by it, the assessment should have been placed at full value for all purposes. But, in the very nature of the case, the State decisions could furnish no guide for the proper interpreta-

tion of a Federal mandamus, because under the State decisions *no mandamus whatever could be granted.*

9. **Errors in Such Interpretation.** In adopting this interpretation, we submit that the Arkansas Supreme Court erred:

(1) Because it paid no attention either to the pleadings or to the jurisdiction of the Federal Court as limited thereby. Since the mandamus suit was a suit solely against the county for the purpose of collecting a debt due solely by the county, as shown by the pleadings, the Federal District Court had no jurisdiction to order that an assessment be made at full value for State, municipal and school purposes. Its jurisdiction was necessarily limited to county taxes.

(2) Because no interpretation should be given to the mandamus that would make it deny the equal protection of the laws. To assess property having a taxable situs in Craighead County at full value for State taxes when the other 74 counties of Arkansas pay State taxes on a fifty per centum basis constitutes a clear, hostile, and palpably arbitrary discrimination against taxpayers in Craighead County. It is not lightly to be presumed that such was the intent of the Federal District Court. Assessing property for county taxes only at full value did not have this effect, because it bore equally on all persons and property in the same taxing unit.

The Misapplication of the State Supreme Court's Own Interpretation of the Mandamus.

10. It does not follow, as held by the Arkansas Supreme Court, that the failure of the assessing authorities to make a full value assessment for all taxing units whether sued or not, invalidated the taxes here sued for, because:

First: The error, if any, was favorable to all taxpayers, including the respondents here. It conferred a positive benefit upon them, because it reduced by one-half their State, municipal and school taxes. No one may complain of a matter which does not affect him adversely.

Second: The error, if any, would affect the State, municipal and school taxes, and not the county general taxes, which would have been placed at full value in any event.

Third: The error, if any, in failing to make the assessment for State, municipal and school purposes at full value was waived by respondents through their own action in paying without protest or complaint such State, municipal and school taxes.

The Refusal of the State Supreme Court to Give Effect to the Mandamus Under the Arkansas Corporation Overdue Tax Law.

11. Crawford & Moses Digest of the Statutes of Arkansas, Secs. 10204, *et seq.* provide a remedy for the collection of overdue taxes from corporations in all cases in which taxes may be due "in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, Section 10208 thereof also provides: * * * "and where for any reason the property on which said taxes may have accrued shall not have been assessed, the court shall refer the matter of such assessment to the assessor of the county in which said property may lie, who shall make his assessment for any past year or years mentioned in the order of reference, and shall return the same into court; and in case the property shall belong, or have belonged, to any delinquent railroad company, the court shall in like manner refer the assessment of said property to the proper officer or board of officers or commissioners, whose duty it shall be, at the time of the making of said reference, to assess property of like kind, and

they shall report their assessment to the court, and the court shall have power to hear testimony and to change said assessment as justice and equity may require."

12. The State Supreme Court held that the 1921 assessment was invalid also for the reason that it was not made directly by the Tax Commission on railroad property but by the County Assessor pursuant to a letter written to him by the Secretary of that Commission.

13. The foregoing statute provided a remedy whereby the court had power, by legislative direction, to make a new assessment as against the respondents whereby not only such defect in the 1921 assessment of railroad property but also the failure of the assessing authorities to make the assessment at full value for all taxing units could have been remedied. Instead of doing this, the Arkansas Supreme Court held the statute inapplicable because the assessment would be made pursuant to the orders of a Federal Court instead of the orders of a State Court. The Supreme Court said:

> "It is further contended by counsel for the plaintiff that these actions were brought under the State (Crawford & Moses' Digest, 10204 *et seq.*) authorizing suits in equity to be brought against corporations for the collection of overdue taxes, and that there should be a recovery in accordance with the valuation directed by the Federal Court judgment, even though it be found that the assessment was not in accordance with the judgment. The courts of the State are not bound to that

extent by the judgments of the Federal court. Under the statute referred to, the courts are authorized and empowered to adjudicate and enforce collection of delinquent taxes which are authorized by the laws of the State—not those merely directed by the judgment of another court."

14. This is not merely the construction of a State statute; for it construes in no sense the meaning of the terms of the act. It is a flat denial of the power and jurisdiction of a Federal Court to make an order involving the taxing laws of the State at least so far as the operation of this statute is concerned. Although the Federal mandamus stands unreversed and unappealed from, and is only collaterally attacked, it is denied any standing whatever and treated as a nullity when its effect as *res adjudicata* as to the liability of taxable property in Craighead County to full value assessment is brought in question. It is equivalent to holding that a State remedy cannot be employed in the State courts to enforce rights determined by a Federal judgment unless the State courts be so minded. This is clearly a decision against the validity of an authority of the United States and denies to the Federal judgment due force and effect.

Importance and Novelty of Questions Presented.

15. The cases are numerous on the question of the power of Federal Courts to issue writs of mandamus affecting taxes. But we have been

unable to find a decision by this or any other court on the question of the status of assessments for taxation made pursuant to such a mandamus when challenged in a State court in a subsequent proceeding to enforce the collection of taxes based on such assessments. There are numerous other instances of similar orders of mandamus in Arkansas, and the question is one of great importance in the State. The question has also been greatly embarrassed on account of the conflict between decisions of the Circuit Court of Appeals and the Supreme Court of Arkansas on the subject. Moreover, the refusal of the Arkansas Supreme Court to permit a new full value assessment under the Arkansas Corporation Overdue Tax Law merely because the right to such full value assessment had been determined by a Federal Court presents a question that we believe has never before been decided.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Arkansas, commanding said court to certify and send to this court a full and complete transcript of the record and all proceedings of said court in the said cause entitled "State of Arkansas, *ex rel.,* J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, appellant, and St. Louis-San Francisco Railway Company and Missouri-Pacific Railroad Company, Appellees," to the end that the said cause may be reviewed and determined by this

court, as provided by law; and your petitioner prays that the judgment of the said Supreme Court of Arkansas in the said cause be reversed, and the cause remanded with directions to enter judgment for petitioner herein.

And your petitioner will ever pray, etc.,

STATE OF ARKANSAS, EX REL., J. S. UTLEY,
Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas,
By J. S. UTLEY, *Attorney General.*

ASSIGNMENT OF ERRORS.

(1) The Arkansas Supreme Court misconstrued the Federal mandamus and thereby denied it full faith and credit in holding that assessments for taxation made prsurant to the Federal mandamus were required to be fixed at the full valuation of the property assessed, not only for county but also for state, municipal and school purposes. The proper construction of the mandamus was that it required full valuation assessment for county purposes only.

(2) The Arkansas Supreme Court denied the Federal mandamus full faith and credit in misapplying its own interpretation of the Federal mandamus by holding that a failure to make full value assessments for all taxing districts as well as the county invalidated a full value assessment for the county, although under any possible interpretation of the mandamus the county assessment would have been placed at full value.

(3) The Arkansas Supreme Court denied the validity of the Federal judgment in mandamus and refused to give it full faith and credit when it refused to permit the mandamus to be used as the basis for a new assessment under the Arkansas Corporation Overdue Tax Statute.

BRIEF ON PETITION FOR WRIT OF CERTIORARI.

I. The jurisdiction of the United States Supreme Court—the existence of a Federal Question.

Recent decisions determine that, since the 1916 act, the proper method of reviewing a failure or refusal of a State Supreme Court to give full faith and credit to a Federal judgment forming the foundation of a suit filed in a State Court is by certiorari and not by writ of error. *Myers* v. *International Trust Co.,* decided Nov. 12, 1923, 263 U. S. 64, 44 Sup. Ct. 68 L. Ed. 100; *Supreme Lodge, K. P.* v. *Meyer,* decided April 28, 1924, — U. S. —, 44 Sup. Ct. 432, 68 L. Ed. 486.

In the determination of what constitutes or enters into the due force and effect of a Federal judgment, three distinct questions or inquiries arise: *First,* the power or jurisdiction of the Federal Court to render the judgment; *secondly,* the proper construction or interpretation of the judgment; and, *thirdly,* the effect of that construction or interpretation upon the right to recover in the case pending in the State court in which the Federal judgment is pleaded.

In the present case the State Supreme Court has admitted the power and jurisdiction of the Federal Court to render the judgment of mandamus, except with respect to the Arkansas Corporation Overdue Tax Statute, but has denied it full faith

and credit in the second and third particulars mentioned in the preceding paragraph. It has misconstrued the judgment in mandamus. It has, moreover, misapplied its own construction in holding that it has the effect of invalidating the taxes here sued for. It has denied that the Federal judgment has any force or effect whatever under the Arkansas Corporation Overdue Taxes Statute.

The erroneous interpretation of a Federal judgment denies it due force and effect as much as would a denial of the power of the Federal Court to render a judgment. Paying lip-service to the power of a court is of little moment if the exercise of that power may be rendered unavailing by misconstruction of a judgment rendered by it. Thus, in *Avery* v. *Popper,* 179 U. S. 305, 314, the court said that a writ of error will lie to a State court "if the validity or *construction* of the judgment of the Federal Court, or the regularity of the proceedings under the execution, are assailed."

In *Tullock* v. *Mulvane,* 184 U. S. 497, 508, where the court, after holding that it had the right to review the State Supreme Court's interpretation of a bond given in a Federal suit, said:

> "In *Mayers* v. *Block,* 120 U. S. 206, the case came to this court on error to a State court, and involved the correctness of the construction by that court of the terms of an injunction bond given in a court of the United States. This court treated the jurisdiction as one of course, held that the parties signing the bond must be presumed to have

> been cognizant of the order under which the bond was given, and to have contracted in reference thereto, and that the bond should be read in the light of the order, and the court applied to the interpretation of the bond its own views of the applicable principles of law."

In *Central Nat. Bank* v. *Stevens*, (1898) 169 U. S. 465, 18 S. Ct. 415, 42 L. Ed. 819, it is said:

> "Whether due effect has been given by a State court to a judgment or decree of a court of the United States is a Federal question within the jurisdiction of this court, on a writ of error to the Supreme Court of the State. *Crescent City Live Stock Co.* v. *Butchers' Union Slaughter House Co.*, 120 U. S. 141, 7 S. Ct. 372."

In *Riggs* v. *Johnson County* (1867) 6 Wall. (U. S.) 166, 18 L. Ed. 768, the court held that, in case county officials were sued for damages for obeying a writ of mandamus issued out of a Federal Court, the proper course was to plead the commands of the writ in bar of the suit; and that, if their defense was overruled and judgment rendered against them, a writ of error would lie from the Supreme Court of the United States to review the judgment.

In *Cumberland Glass Mfg. Co.* v. *DeWitt* (1915), 237 U. S. 447, 35 S. Ct. 636, 59 L. Ed. 1042, the court said:

> "The Federal question, which is the basis of jurisdiction here, arises upon the plea of *res judicata* to which a demurrer was sus-

tained in the Maryland court of original jurisdiction, which judgment was affirmed by the court of appeals. This presents a Federal question because the plea of former judgment in a Federal Court adjudicating a right of Federal origin asserts a right which, if denied, made the case reviewable here."

In *Radford* v. *Myers,* (1914) 231 U. S. 725, 34 S. Ct. 249, in a suit involving the scope and extent of a Federal judgment, the State Supreme Court held that a particular issue had not been determined by the Federal judgment, as in the case at bar the Arkansas Supreme Court held that the Federal judgment of mandamus did not adjudicate whether the assessment for county general purposes or for all purposes was to be placed at full value. In the Radford case, as in the case at bar, the State Supreme Court, after having determined that the particular issue had not been precluded by the Federal judgment, then proceeded to declare its own decision upon such issue. The Supreme Court entertained jurisdiction of this case upon writ of error, saying:

"From the foregoing statement it is evident that the sole Federal question involved arises from the alleged denial in the judgment of the Supreme Court of Michigan of due effect to the judgment rendered in the United States Circuit Court in Pennsylvania, which is relied upon by the plaintiff in error as *res judicata* of the matters in controversy. Whether such effect was given as the former judgment required presents a Federal question for determination. *National Foun-*

> *dry & Pipe Works* v. *Oconto Water Supply Co.* 183 U. S. 216, 233, 46 L. Ed. 157, 169, 22 Sup. Ct. Rep. 111. To determine this issue we examine the judgment in the former case, the pleadings filed and the issues made, and if necessary to elucidate the matters decided, the opinion of the court which rendered the judgment. *National Foundry & Pipe Works* v. *Oconto Water Supply Co. supra*, 234, and previous cases in this court therein cited."

The present suit was brought under the provisions of the Arkansas Corporation Overdue Tax Statute (Crawford & Moses' Digest of the Statutes of Arkansas, §§10204-10214). If the remedial provisions of that statute were permitted to be used in the present case, the alleged errors and irregularities in the assessments could be cured by a new assessment to be made by the assessing authorities of the state under the direction of the court in this very suit. The complaints were expressly framed with this idea in contemplation, and part of the prayer of the complaint was that, if the assessment sued on be held defective, such a new assessment for taxation be made, as directed by the statute. But the State Supreme Court denied this relief, not on the ground that the terms of the statute did not provide therefor, but solely on the ground that the right to the full value assessment for county purposes only was based on a judgment of Federal origin and that a Federal judgment would not be recognized under the statute.

In plain English this unquestionably means that if the Federal judgment runs counter to the State Supreme Court's view of the laws of the State, it is of no validity and will not be enforced by the State courts. This is a refusal to give full faith and credit to a Federal Court's interpretation of what the State laws are: As to this place of the case, there was drawn in question the validity of an authority exercised under the United States, and the decision was against its validity. It does not involve the question of the construction of the Federal judgment, but rather the power of the Federal Court to render a judgment that could have any effect whatever under the particular State statute. Believing, that under the 1916 act, this kind of error must be reviewed by writ of error and not by certiorari, both methods of review have been prosecuted in the instant case.

It will probably be suggested that the construction of a State statute is a State question to be determined exclusively by the State courts, and is not a Federal question. This is undoubtedly true of the ordinary interpretation of the term of a State statute. But the case at bar presents a different situation. Here no language or terms of the Corporation Overdue Tax Law are construed. The State Supreme Court holds, irrespective of the interpretation of the statute, that a Federal judgment cannot form the foundation for a new assessment under the State Overdue Tax Law; that the power of the Federal Courts is not that extensive. It is in no sense a construc-

tion of the statute but a determination that a Federal judgment can give no rights thereunder, thereby clearly raising a Federal question. No State Supreme Court will be permitted to say that a State statute means one thing when the judgment of a State court is involved and quite a different thing (or rather nothing at all) when the judgment of a Federal Court is in question. An analogous situation arose in *West Side Belt R. Co.* v. *Pittsburgh Const. Co.*, (1911) 219 U. S. 92, 31 S. Ct. 196, 199, where the court said:

> "* * * Indeed, defendant in error asserts that it was assumed by everybody at the trial, but it is insisted that the effect of the act is not a Federal question, but solely one for the state courts. In this we cannot concur. It is an element in the consideration of the question whether due faith and credit were given to the judgment of the circuit court, and we are brought to the consideration of the curative effect of the act."

An identical question was presented in *Kenny* v. *Supreme Lodge of the World, Loyal Order of Moose*, (1920) 252 U. S. 411, 40 S. Ct. 371, 372, where an Alabama Statute expressly provided, that an action under it had to be maintained in a court of competent jurisdiction within the State of Alabama "and not elsewhere" and the Alabama courts refused to give full faith and credit to a judgment of a sister State on a cause of action which had arisen under the statute in Alabama, it was held that, since the statute as construed by the State Supreme Court was in-

valid, and the decision was in favor of the validity of the statute, writ of error and not certiorari was the proper method of review in the United States Supreme Court.

Here the Arkansas statute does not say, either expressly or impliedly, that a Federal judgment shall have no force or effect under it and that only State judgment will have any operation under the statute. However, the Arkansas Supreme Court has so limited the application of the statute. In so doing it committed exactly the same type of error as did the Alabama Supreme Court in the Kenny case, and it is subject to review by the same method.

II. The Arkansas Supreme Court misconstrued the Federal Mandamus.

In its opinion herein (*State* v. *St. Louis S. F. Ry. Co.*, (1923) 162 Ark. 443, 452), the Supreme Court of Arkansas said:

> "When the effect of the judgment of the Federal Court is called in question in subsequent litigation in a State court in which the latter has jurisdiction of the subject-matter and of the parties, the State court may determine for itself the scope and extent of that judgment, though that is a Federal question, which may be reviewed, on proper application, by writ of error or certiorari. An error of the State court in a decision as to the effect of the Federal Court judgment would have to be corrected in that way. It is therefore proper for us to consider, at this point

of the controversy, what is the effect of the judgment of the Federal Court, and this must be determined from an examination of the face of the record in the case in which the judgment was rendered.

The judgment directed that the assessing officers of the county assess at its full value, in money, all property in Craighead County.' This does not specify the mode of assessment, and that is left to the operation of the State laws as construed by this court. It does not direct that the assessment shall extend only to county taxation, but it applies to the whole assessment. This court has decided in a recent case, that, under the Constitution of this State, there can only be one assessment of property for all purposes of taxation—State, county, municipal and school. *Hays v. Missouri Pac. Rd. Co.*, 159 Ark. 101. The effect of the judgment of the Federal Court therefore was to compel the assessing officers to assess all the property in the county at full valuation, in the mode provided by the laws of the State; that is to say, by a single valuation for all taxation purposes. It must be noted, then, that the valuation made by the assessing officers did not conform to the judgment of the Federal Court in assessing at a full valuation, nor in conformity with the laws of the State, as declared by this court, in making such an assessment as would be in uniformity with the assessments of property in other counties. The assessing officers followed neither direction, but made two separate valuations for taxation purposes, which was, according to our decision in the Hays case, *supra*, unauthorized by law."

It is obvious that the State Supreme Court adopt the theory that the Federal Court has left to it power to place its own interpretation upon the Federal judgment, as is shown by the statement: "This [the Federal judgment] does not specify the mode of assessment, and that is left to the operation of the State laws as construed by this court." We construe this to mean: If the Federal judgment had stated in express terms that the assessment should be placed at full value for county taxation only, then the State Supreme Court would have given such effect to the judgment, but, since there is no express language on this point, the State Supreme court is at liberty to construe the Federal judgment in the light of former State decisions under which no mandamus could ever have been rendered rather than in the light of the previous conflicting Federal decisions to which the Federal judgment owed its very existence. In the adoption of this view the State Supreme Court erred.

Although it is true that the mandamus judgment itself does not say in express language that only the assessment for purposes of county taxation is to be placed at full value, yet, in the light of the pleadings and of the entire case, that is exactly what the mandamus judgment does say *by necessary implication.* What is necessarily implied is just as effective as what is expressly stated.

Out of what facts does this necessary implication arise? These facts are four in number: First, the nature of the right possessed by the

Maccabees; secondly, the pleadings in the mandamus proceeding; thirdly, the want of necessary parties defendant to affect the assessment for State, municipal and school purposes; and, fourthly, the fact that the mandamus as construed by the State Court, would deny the equal protection of the laws, which as the assessment was actually made, the Federal judgment did not do.

Nature of the Right Possessed by the Maccabees.

The State was not indebted to the Maccabees in any sum whatever. Nor were any of its municipal corporations or school districts so indebted. The Maccabees had a claim or cause of action against Craighead County only. Therefore, the Maccabees had no right, or even a pretense of a right, to demand that the assessment for taxation for State, municipal or school taxes should be increased to the greater burden of the taxpayers. It was none of the Maccabees' affair whether the State, municipal corporations and school districts collected any taxes or not. From the very nature of their cause of action, the interest of the Maccabees was limited to the county and to county taxes, and they could ask no relief pertaining to any other taxing district. No Federal Court could have thought for a moment that it had the rght to assume control over taxation in municipal corporations and school districts merely because an entirely separate and distinct taxing district, i. e. the county happened to have a creditor.

The Pleadings in the Mandamus Suit. Reference to the petition for mandamus will disclose that the petitioner asserted no right except as a creditor of Craighead County, and that the relief prayed for was merely such relief as would increase the revenues of Craighead County from taxation. By necessary implication this limits the relief sought to Craighead county and its revenues.

Want of Necessary Parties Defendant. The only defendants in the mandamus proceeding were the County Judge of Craighead County who is the chief fiscal officer of the county and the various assessing officials. No official representing the State, municipal corporations and school districts in the handling of their respective fiscal affairs was made a party defendant. In fact, the State could not have been so sued. The Eleventh Amendment to the Federal Constitution would prevent such a suit against the State as such. No creditor of a State could maintain a mandamus proceeding in the Federal Court to compel the payment of a debt due him. No municipal corporation or school district was made a party defendant. It, therefore, follows that for want of necessary parties defendant the Federal Court could not and would not attempt to make an order of mandamus that would compel a full value assessment in taxing districts not even a party defendant in the case and which had never been given any notice or granted any opportunity to be heard. On the other hand, Craighead County was properly in court, and the assessing officials were also in

court. Accordingly, it would be the rankest kind of presumption contrary to the most elementary conceptions of due process of law to conclude that a Federal Court would so far attempt to exceed its power and jurisdiction as to make a mandamus order intended and designed to affect not only the defendant in court, i. e. Craighead County, but also the State, and all municipal corporations and school districts located in Craighead County. It seems clear that the Federal Court rendering this mandamus judgment would, upon opportunity given, be the first to repudiate such a suggestion, as was actually done by Judge Trieber in a letter written by him to the Craighead County assessor which appears at page 32 of the record 20 herein.

Denial of the Equal Protection of the Laws. The State Supreme Court itself limits the effect of the mandamus to Craighead County. To enforce the mandamus, as interpreted by the State Supreme Court, would mean that the State general property tax would be imposed in Craighead County upon a full value assessment of taxable property whereas in the other 74 counties of the State the same State tax would be laid only upon a fifty per centum assessment. This would require a taxpayer having taxable property having a situs for taxation in Craighead County to pay on the same valuation of the same kind of property exactly twice the same burden of taxation as that paid on identical property having its situs for taxation in some other county. In other words, in his capacity as a citizen

of the State and owing to the State no greater duties than another citizen located in some other county the Craighead County citizen would have a double burden of State taxation imposed upon his shoulders. To imagine that the Federal Court in rendering this mandamus order intended such an arbitrary, unjust and indefensible discrimination against Craighead County citizens in respect to State taxes merely because the county was indebted to the Maccabees calls for a reflection upon the sense of justice of that court which we refuse to make. Yet this is the necessary effect of the State Supreme Courts' interpretation of the Federal mandamus. Discriminations in taxation on account of residence have always been held arbitrary and in contravention of the equal protection of the laws. If the State Legislature should do what the State Supreme Court has here done, i. e. direct part of the taxpayers in one taxing district (the State) to pay taxes on a fifty per centum assessment and compel the remainder of the taxpayers of the same taxing district (i. e. the State taxpayers resident in Craighead County) to pay taxes on a full valuation assessment, we feel that no tribunal would hesitate to declare such legislation unconstitutional and void. Why, then, should the State Supreme Court attribute such an intent to the Federal Court in ordering the mandamus?

In 26 R. C. L., p. 245, it is said:

> "The valuation of all property within the same taxing district must be effected on the same basis if the tax is to be uniform in the constitutional sense."

In *Sioux City Bridge Co.* v. *Dakota County*, (123) 260 U. S. 441, 43 S. Ct. 190, the court said:

> "In the case of *Sunday Lake Iron Co.* v. *Wakefield Tp.*, 247 U. S. 350, 352, 353, 38 Sup. Ct. 495, 62 L. Ed. 1154, this court said: 'The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by State officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond* v. *Chicago Union Traction Company*, 207 U. S. 20, 35, 37.'"

In 1 Cooley on Taxation (3rd ed. p. 260), it is said, relative to the requirements of equality and uniformity:

> "But when, for any reason, it becomes discriminative between individuals of the class taxes, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissible. It is immaterial on what ground the selection is made—whether it be because of residence in a particular portion of the taxing district, or because the persons selected have been remiss in meeting a former tax for the purpose, or because of any other reason, plausible or otherwise; for if the principle of selection be once admitted, limits cannot be

set to it and it may be made use of for the purposes of oppression, or even of punishment."

What reason does the Supreme Court of Arkansas assign for its construction of what the Federal Court meant? Nothing, but its own decision in *Hays* v. *Missouri Pac. Rd. Co.*, (1923) 159 Ark. 101, a case which was decided long after the mandamus had been rendered and even after these very suits for collection of these taxes had been filed. The Hays case was the very first case in which the Arkansas Supreme Court laid down the proposition that the equality and uniformity clause of the State Constitution required that there should be but one assessment for taxation, and that that assessment had to be on the same fractional basis for all taxing districts, i. e. the State, counties, municipal corporations and school districts, notwithstanding the very obvious fact that taxing districts of different classes had absolutely no connection whatever with each other, and that all the other States in the Union had uniformly held that the requirement of equality and uniformity applies only to the particular taxing district levying the tax. See Cooley, Taxation (4th ed.), Sec. 313. It must be admitted that the Hays case is the law in this State, but at the same time the fact that that decision is absolutely contrary to what every other State in the Union has held on the same point is at least of value in supporting our assertion that the Federal Court cannot be said to have had the law of the Hays case in

mind when it rendered the mandamus order and that an attempt to apply the law of the Hays case here will defeat, rather than effectuate, the intention of the Federal Court and the true scope and effect of its order. The Federal Court had the right to assume that the Arkansas Supreme Court would not go contrary to the rule laid down by all other States having similar constitutional provisions on equality and uniformity.

The Arkansas Supreme Court states that, by its construction of the Federal mandamus, it saves the principle of State law that there can be but one assessment on the same basis for state, county, municipal and school taxes. But it is clear that this is not so. For when, under the present interpretation of the mandamus, the Arkansas Railroad Commission, as successor to the State Tax Commission, proceeds to assess railroad property, it will have to make two assessments, one at one hundred per centum for Craighead County, and one at fifty per centum for all the other counties. When we look deeper than the surface, it is apparent that the principle of one basis of assessment is not preserved, but we do have the plainest kind of arbitrary discrimination against the taxpayers of Craighead County.

The State Supreme Court is inconsistent. If, as stated in the Hays case, it be a denial of equality and uniformity to permit one school district to have a full value assessment throughout the entire school district where, in any event, all persons liable to pay the tax would be assessed

upon the same basis, how much greater is that denial when a double State assessment is imposed on the citizens of one county only with the result that all persons liable to pay the State tax are not even assessed upon the same basis?

What is the reason for this inconsistency? The Federal mandamus itself is based upon one interpretation of the State equality and uniformity clause, while the decision of the State Supreme Court in this case is based upon a wholly different interpretation.

The Federal doctrine is that, under the Arkansas equality and uniformity provision, a county can be compelled, at the instance of a county creditor, to levy its taxes upon an assessment at full valuation. In other words, it considers the county as a separate taxing unit, having its own obligations, its own taxes and assessments, and capable of being considered separately from the other counties, or the other taxing districts of the State. *United States* v. *Jimmerson*, 222 Fed. 489; *United States* v. *Cargill*, 263 Fed. 856.

The State doctrine is that, under this same constitutional provision, a county cannot be compelled, at the instance of a county creditor, to levy its taxes upon an assessment based upon full valuation, for the reason that one county cannot be considered by itself; that all counties in the State, as well as all other taxing districts of whatever species, must be considered, or else equality and uniformity will be denied. *State* v. *Meek*, 127 Ark. 349. As a corollary from this view, it was

subsequently declared that this inter-connection between all the taxing units of the State was such that the equality and uniformity clause demanded that all assessments for taxation for all taxing districts, irrespective of class or kind, must be on the same fractional basis of assessment, i. e., there can be only one assessment for the purposes of taxation by all the different taxing districts. Such is the effect of the Hays case; and in the Hays case it is affirmatively stated by the State Supreme Court that it is based upon the principle announced in the Meek case.

These antipodal doctrines cannot be harmonized. You cannot take a Federal decision upholding the right to mandamus and a State decision denying the right under identical circumstances and work out a rule of law in harmony with both cases. Such a feat in logic would be beyond the powers of the greatest Greek sophist that ever lived. But has not the State Supreme Court attempted to do this very thing when it claims to recognize the validity and binding effect of the Federal mandamus but at the same time in construing its effect as to matters not covered by express words uses, as its chemical reagent, not the principles of the Federal interpretation in which the mandamus lives, and moves and has its being, but the principles laid down in State decisions under which the mandamus could never have been rendered in the first place?

Full faith and credit to the Federal mandamus requires that the Federal interpretation be followed throughout, for the simple reason that that inter-

pretation furnished the very foundation for the judgment. That view of the effect of the equality and uniformity provision in the State Constitution which made the rendition of the mandamus judgment possible should not, when the interpretation of the mandamus arises, be wholly abandoned and the hostile and contradictory State view substituted. To engraft upon the mandamus a principle derived from a wholly opposite view of the State Constitution and under which it could never have been granted is a denial of full faith and credit which cannot reasonably be justified or executed on the ground that the Federal Court did not attach to its order specific directions stating in express words the detailed application of the principle of the mandamus to each step in the process of assessment.

This inconsistency in reasoning has resulted in a half Federal (recognition of power of Federal Court to order mandamus) and half State (construing effect of mandamus according to hostile and contradictory State decisions) interpretation, thus creating a legal half-breed bearing no resemblance to either parent, and effecting a legal anomaly or curiosity constituting a complete negation of equality and uniformity and a total denial of the equal protection of the laws.

The spirit underlying the Federal order was well as its letter should be considered. A one hundred per cent instead of a fifty per cent faith and credit should be given to the Federal order of mandamus.

III. The Arkansas Supreme Court misapplied its own interpretation of the mandamus by holding that a failure to make a full value assessment for all taxing districts, as well as the county, invalidated a full value assessment for the county, although under any possible interpretation of the mandamus the county assessment would have been placed at full value.

Under the assessment for taxation as actually made the taxpayers were compelled to pay their state, municipal and school taxes upon a fifty per centum valuation and their county taxes upon a full value assessment. If the assessment had been made as the Arkansas Supreme Court held that it should have been made, the taxpayers would have been compelled to pay not only their county but also their state, municipal and school taxes on a full value assessment. To the extent of one-half of the amount of state, municipal and school taxes, the taxpayers were positively benefited by the mode in which the assessment was made.

A favorable error is no ground for complaint. One may complain against prejudicial errors only. This rule is fundamental. It is practical common sense. Yet the Arkansas Supreme Court ignores it when it comes to determining the effect of its interpretation of the mandamus upon the legality of the more favorable assessment which was actually made. That court says (162 Ark. 443, 453):

> "It is contended by counsel for plaintiff that, if it be conceded that the assessment was not made in accordance with the direction of the

> Federal Court judgment, the effect was merely to relieve the taxpayers from a portion of the tax which would have been imposed by a full valuation assessment by omitting the full valuation from the taxes for state, municipal and school purposes, and that they cannot complain at this reduction. Counsel rely on the decision of this court in the recent case of *Summers* v. *Brown*, 157 Ark. 509. That decision does not, however, have the application here that counsel contend for. In that case there had been a valid assessment for all purposes, and the clerk following the erroneous direction of the equalization board and the County Court, reduced the taxes to one-half of the amount originally assessed. We held that the reduction was void, but that the taxpayer could not complain and escape payment of the amount of taxes extended against his property. In the present case there has been no valid assessment, either under the direction of the Federal Court judgment or the laws of the State; therefore the taxpayers are not bound by the illegal assessment."

Now, in *Summers* v. *Brown, supra*, the Arkansas Supreme Court had said:

> "The right to extend taxes levied upon a larger valuation necessarily included the right to extend the taxes upon a less or smaller valuation. The extension of a smaller amount than should have been extended was an irregularity merely, and favored rather than injured appellees."

The point we make here is that this is not a rule of local law which is binding here upon the United

States Supreme Court, but that in determining whether or not due force and effect has been given to a Federal judgment in mandamus by a State Court, the Supreme Court of the United States must necessarily inquire into the soundness of the reasons advanced by the State Courts why a particular effect has not been given to the Federal judgment. It is not permissible to avoid the necessary effect of such a judgment by such an illogical position that one may complain of a favorable error, for such a holding is contrary to all general principles and to one's innate sense of justice.

It can furnish no ground for complaint on the part of the railroads that the state, municipal corporations and school districts failed to collect on a full value assessment in Craighead County but only on the same fifty per centum basis of valuation that was employed elsewhere throughout the State. It is only a person injuriously affected or discriminated against that will legally be heard to make such complaints. 12 C. J., p. 768, Par. 189; *Hendrick* v. *Maryland*, 235 U. S. 610, 35 S. Ct. 140, 59 L. Ed. 203; *Darnell* v. *Indiana*, 226 U. S. 390, 33 S. Ct. 120, 57 L. Ed. 267; *Murphy* v. *California*, 225 U. S. 623, 32 S. Ct. 697, 56 L. Ed. 1229, 41 L. R. A. (N. S.) 153. No one can raise an objection to the constitutionality of a statute on account of discrimination therein, unless he be the person discriminated against, or adversely affected. 6 R. C. L., p. 90, Par. 88; Case note: 32 L. R. A. (N. S.) 954; *Gallup* v.

Schmidt (Ind.), 54 N. E. 384, affirmed in 183 U. S. 300. One who is subject to the lowest rate of taxation cannot complain that a higher rate is imposed on some one else. Re Keeny, 194 N. Y. 281, 97 N. E. 428.

One cannot complain of a judgment on the ground that it is too favorable to him. In 2 R. C. L., p. 237, Par. 197, it is said:

> "A party cannot complain of an error which operates favorably to him and cannot assign as error that the judgment is too favorable to him. Thus the failure of the court to assess disfranchisement as a part of the punishment of a convict is not error of which he can complain. Nor can a party complain that a fine assessed against him is less than the minimum provided for by ordinance. So also, a party against whom a verdict has been rendered cannot complain that it is for less amount than the evidence demands."

Undoubtedly the same principle should and must apply to an assessment for taxation, especially when the remission of part of the liability is attempted to be used as a pretext for evading all of the liability. The only parties that could complain of this failure were the State, the municipal corporations and the school districts, and they could not complain here because they were not parties to the mandamus proceeding and were not, therefore, entitled to any of its benefits.

Nor can it be said that this ruling of the State Supreme Court that the effect of the failure to make a full value assessment for all taxing dis-

tricts as rendering a full value assessment for one purpose only, i. e., county purposes, wholly void so that no recovery can be had thereon is purely a matter of local law and does not involve a Federal question so as to confer jurisdiction on this court. An analysis of the situation shows that this question is inextricably connected with the force and effect to be given to the Federal mandamus. For it is not the law of Arkansas that you can have a full value assessment for all taxing districts. *State* v. *Meek,* 127 Ark. 349. The law of Arkansas is that the basis of assessment for all taxing districts shall be fifty per centum of full valuation. Consequently, to say that it is the local law of Arkansas that under the Federal mandamus there should be a full value assessment for taxing districts is incorrect; for that conclusion is derived not from the local law, which holds that there could be no full value assessment in any event, but from the construction placed on the Federal mandamus by the Arkansas Supreme Court. In other words, there could not arise as a purely local question of Arkansas law the inquiry whether or not under a Federal mandamus the assessments of all taxing districts must be placed on a full value basis, because the very heart and soul of such a question is not, what is the law of Arkansas? but, what is the effect of the mandamus?

To say, in one breath, that it is the local law of Arkansas that no taxing district can have a full value assessment but that the assessment of all taxing districts must be on a fifty per centum

basis, and to say in the next breath, that, when there is a Federal mandamus, it is the local law of Arkansas that all taxing districts must have a full value assessment is a contradiction in terms. There are not two different and contradictory kinds of local law in Arkansas. The truth is that the local law of Arkansas is as first stated, and the second inquiry does not relate to the local law in any manner but pertains rather to the effect to be given to a Federal judgment rendered by a court of competent jurisdiction standing unvacated and unreversed with that judgment rendered under a theory of the law exactly opposite to that held by the State's own courts.

Under the Federal judgment in mandamus it was necessarily a matter of indifference both to the Federal Court and to the Maccabees whether the state, municipal and school taxes were extended on a full value assessment or not; but it was a matter of the essence under that mandamus that the assessment for county purposes be placed at full value, for that was the source from which the debt of the Maccabees could be paid. Now to hold that the taxes extended on the full value assessment for county purposes is void and uncollectable because state, municipal and school taxes were not also extended on a full value assessment manifestly avoids and defeats the operation of the mandamus with respect to the very subject-matter in which it essentially had its force and effect. To justify this annullment of the effect of the mandamus on the theory that as

a matter of local law a State Supreme Court has a right to declare that a favorable error redounding to the benefit of the complaining taxpayer may be urged by him as a reason for not paying his county taxes on the basis fixed by the mandamus is to open up, under the eagis of local law, a wide avenue through which State Courts by the exercise of the proper degree of astuteness may refuse to give full faith and credit to Federal judgments. It is not local law. It is purely a question of the proper procedure under the Federal mandamus, and that is a question of the full faith and credit to be given to a Federal judgment. If the local law had been followed, there would have been no mandamus and this cause would never have arisen. To contend then that the proper construction of a Federal mandamus repudiating the local law is in itself a question of local law, or that a Federal mandamus issued in opposition to the local law is given full faith and credit by determining its effect, limiting its operation and testing the assessment made under it by the terms of this hostile and utterly opposed local law requires an intellectual somersault of which a mind influenced by the ordinary conceptions of logic and reason is incapable. As well as attempt to translate Greek with the aid of a Latin dictionary.

Moreover, the Arkansas Supreme Court did not hold that the assessment was void because it was at full value for county purposes and at half value for other purposes. The railroads tendered into court the amount of taxes that would have

been due on a fifty per centum assessment. If the assessment was utterly void, no taxes whatever could have been collected thereon. The effect of the decision is merely to hold that the additional fifty per centum added to the county assessment was void. In other words, so far as the ordinary assessment was added to on account of the mandamus, it has been adjudged void. Whatever reasoning may have been employed, it is significant that the effect of the State decision is merely to hold that part of the assessment void which could be referred to the Federal mandamus.

Now the railroads were no longer in position to assert that they were complaining because the state, municipal and school taxes had not been doubled; for they had previously paid, without protest or complaint, the state, municipal and school taxes as extended on the ordinary fifty per centum assessment. If there was any error in respect to full value assessments, it did not exist with respect to the county assessment because that would have been placed at full value in any event but in the failure to make a full value assessment for state, municipal and school purposes. By paying the state, municipal and school taxes, on a fifty per centum assessment, the railroads definitely and conclusively waived any and all objections that they might have urged against the assessments on which they were extended. By their payments their interest in those taxes and assessments had ceased and terminated. *Singer Mfg. Co.* v. *Wright,* (1891) 141 U. S. 696, 12 S. Ct. 103. They should not now be permitted to

urge any alleged defects in those assessments to defeat the collection of the county taxes which would have been extended in any event on a full value assessment.

IV. The Arkansas Supreme Court denied the validity of the Federal judgment in mandamus and refused to give it full faith and credit when it refused to permit the mandamus to be used as the basis for a new assessment under the Arkansas Corporation Overdue Tax Statute.

The State of Arkansas has a Corporation Overdue Tax Statute (C. & M. D., Secs. 10204-10214). We shall not encumber this brief with a reprinting of the entire statute with all procedural details but only those sections that have a direct bearing on the present issue.

C. & M. D., Sec. 10204 provides:

> "Where the Attorney General is satisfied from his own investigations or it is made to appear to him by the statement in writing of any reputable taxpayer of the state, that, in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause, that there are overdue and unpaid taxes owing to the state, or any county or municipal corporation, or road district, or

school district, by any corporation upon any property now in this state which belonged to any corporation at the time such taxes should have been properly assessed and paid, it shall become his duty at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which any part of such property as may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated, in which suit or suits the corporation owing such taxes or any corporation claiming an interest in any such property as may have escaped taxation as aforesaid, shall be made a party defendant, and the Governor is authorized to employ any attorneys that may be necessary to assist the Attorney General in such suits; provided, that this Act shall be construed as retrospective as well as prospective in operation."

C. & M. D., Sec. 10207 provides:

"Said complaint shall describe as nearly as may be the property on which said taxes have accrued, and the state, counties, school districts and municipal corporations aforesaid shall have a lien on said property from passage of this Act, for the payment of said overdue taxes, to be enforced by suit as herein provided."

C. & M. D., Sec. 10208 provides:

"On a final hearing the court shall determine the amount of said state, county, school district and municipal taxes, and the

penalties and costs due on the same, if any, and to whom said taxes are payable, and shall decree payment thereof accordingly, and where for any reason the property on which said taxes may have accrued shall not have been assessed, the court shall refer the matter of such assessment to the assessor of the county in which said property may lie, who shall make his assessment for any past year or years mentioned in the order of reference, and shall return the same into court; and in case the property shall belong, or have belonged, to any delinquent railroad company, the court shall in like manner refer the assessment of said property to the proper officer or board of officers or commissioners, whose duty it shall be, at the time of the making of said reference, to assess property of like kind, and they shall report their assessment to the court, and the court shall have power to hear testimony and to change said assessment as justice and equity may require."

C. & M. D., Sec. 10209 provides:

"On such final hearing the court shall render a decree declaring and enforcing said lien for taxes, by sale of the property to which said taxes may have attached. In case of a railroad, the lien shall be decreed against the whole line of the road, including the main line and sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, tunnels, cuts, ties, trestles and bridges, and all lands in the state belonging to such corporations. The court shall decree the said taxes shall be paid within three months after rendering said decree, and

> that in default thereof said defendant shall pay a penalty of ten per centum on the amount of said taxes."

The constitutionality of this statute has been upheld. This statute has been held to give the State a remedy by way of review by the courts where the assessing boards or officers have proceeded *on the wrong basis of valuation,* in omitting some property or element of value, or in adopting the wrong basis of estimating value [*State* v. *K. C. & M. R. & B. Co.,* (1913) 106 Ark. 248, 153 S. W. 614] and that since an amendment to the statute it has authorized a review by the courts in favor of the State when a mistake has been made by the assessing officers in assessing the value of property too low. *State* v. *K. C. & M. Ry. & B. Co.,* (1914) 117 Ark. 606, 174 S. W. 248. An overdue tax suit brought under this statute was sustained by this court in *Ft. Smith Lbr. Co.* v. *State of Arkansas,* (1920) 251 U. S. 532, 40 S. Ct. 304.

It is clear, then, that under the express language of this statute and under the interpretation given to it by the Supreme Court of Arkansas the liability of a corporation for taxes cannot be defeated on the ground that the assessment for taxation was made on the wrong basis or for that matter that there was no assessment whatever, because the statute provides machinery where a new anl legal assessment can be made and all irregularities or defects of any nature whatever may be corrected.

Reference to the complaints filed against the railroads will show that the present suits were expressly brought under this statute, and part of the relief prayed for was that, if there should be found to exist any defect in the assessment, a new assessment be made as prescribed by the statute. The statute provides an ample remedy where a new assessment could have been made at full value for state, municipal and school purposes as well as for county purposes, and the alleged defect that the State Tax Commission did not make the full value assessment in the year 1921 could also have been remedied.

In passing on this contention the Supreme Court of Arkansas said in the present case (162 Ark. 454):

> "It is further contended by counsel for the plaintiff that these actions were brought under the statute (Crawford & Moses' Digest Sec. 10204, *et seq.*) authorizing suits in equity to be brought against corporations for the collection of overdue taxes, and that there should be a recovery in accordance with the valuation directed by the Federal Court judgment, even though it be found that the assessment was not in accordance with the judgment. The courts of the state are not bound to that extent by the judgments of the Federal Court. Under the statute referred to, the courts are authorized and empowered to adjudicate and enforce collection of delinquent taxes which are authorized by the laws of the state, not those merely directed by the judgment of another court.
>
> Each of the defendants in these cases has offered to pay, at the outset, the amount due

upon its property in accordance with the Constitution and laws of this state, and they cannot be compelled, under the statute referred to above, to pay more than that merely because there has been an adjudication of another court. The Chancery Court awarded the plaintiff a decree against each of the defendants for those amounts.

Courts of equity, under the statute referred to, are authorized to enforce only the taxation laws of this state as interpreted by the Supreme Court of this state. The Federal Court did not determine the amount that each taxpayer was to pay, but adjudged that there should be an assessment by the assessing officers at a full valuation, and, as before stated, this was not done."

It is true that a Federal judgment in mandamus, though it has full force and effect as *res adjudicata* as against every other law in the State of Arkansas, pales, trembles and falls prostrate before the Arkansas Corporation Overdue Tax Law? If the mandamus finally adjudicated and determined the liability of property in Craighead County to a full value assessment as opposed to the State Supreme Court's own interpretation of the equality and uniformity clause of the State Constitution, is it not equally effective to fix that same liability under the remedial terms of the Arkansas Corporation Overdue Tax Law which has only a legislative origin and is not provided for by the State Constitution? Yet, in unmis-

takable language, the Arkansas Supreme Court says:

> "Courts of equity, under the statute referred to, are authorized to enforce only the taxation laws of this state *as interpreted by the Supreme Court of this state.* The Federal Court did not determine the amount that each taxpayer was to pay, but adjudged that there should be an assessment by the assessing officers at a full valuation, and, as before stated, this was not done."

This can only mean that, so far as enforcing the collection of taxes under this statute is concerned, the courts of the State are bound only by the interpretations of the State Supreme Court and that an adjudication of the State law made by a Federal Court in a suit properly before it is absolutely of no force and effect and will not have the incidents of *res adjudicata* on the questions of tax liability but becomes a mere nullity. It is true that the mandamus did not set out the exact amount payable by each taxpayer; but it did establish the liability for a full value assessment and that liability the State Supreme Court has refused to recognize so far as any enforcement of it through the instrumentality of the Corporation Overdue Tax Act is concerned. If a State Supreme Court can deny the mandamus effect under this particular statute, it is plainly at liberty to do so with respect to any other state statute. It could say with equal propriety that it would not even entertain a suit to collect taxes or assessments levied or made pursuant to a Federal

mandamus. Then, since state taxes must be collected through the medium of actions in State Courts, it would render all Federal mandamus proceedings utterly futile.

The limitation upon the operation of the mandamus to the effect that only the tax laws of the State as construed by the State Supreme Court would be considered in actions brought under the Overdue Tax Act is nothing more nor less than a declaration that the Federal Courts have no jurisdiction even in cases properly brought before them to determine and adjudicate questions of state law pertaining to taxation.

It is well settled that where a Federal Court has jurisdiction of a controversy by reason of the diversity of citizenship of the parties, it has power to decide all questions of state law that may be raised therein, nor is it compulsory upon the Federal Court, upon pain of rendering its judgment a nullity, to follow state decisions as to the state law.

Texas Co. v. *Brown*, (1922) 258 U. S. 466, 42 S. Ct. 375.

Siler v. *Louisville & N. R. Co.*, (1909) 213 U. S. 175, 29 S. Ct. 451.

Louisville & N. R. Co. v. *Garrett*, (1913) 231 U. S. 298, 34 S. Ct. 48.

Southern Ry. Co. v. *Watts*, (1923) 260 U. S. 519, 43 S. Ct. 192.

Wichita R. & Light Co. v. *Public Utilities Commission of Kansas*, (1922) 260 U. S. 48, 43 S. Ct. 51.

A closely analogous situation is presented by the cases which hold that a State Court must give full faith and credit to the judgment of a court of a sister state although the judgment be one that could never have been recovered originally in the courts of the particular state.

Thus, in *Kenney* v. *Supreme Lodge of the World, Loyal Order of Moose,* (1920) 252 U. S. 411, 40 S. Ct. 371, the court said:

> "Moreover, no doubt there is truth in the proposition that the Constitution does not require the state to furnish a court. But it also is true that there are limits to the power of exclusion and to the power to consider the nature of the cause of action before the foreign judgment based upon it is given effect. In *Fauntleroy* v. *Lum,* 210 U. S. 230, 28 Sup. Ct. 641, 52 L. Ed. 1039, it was held that the courts of Mississippi were bound to enforce a judgment rendered in Missouri upon a cause of action arising in Mississippi and illegal and void there. The policy of Mississippi was more actively contravened in that case than the policy of Illinois is in this. Therefore the fact that here the original cause of action could not have been maintained in Illinois is not an answer to a suit upon the judgment. See *Christmas* v. *Russell,* 5 Wall. 290, 18 L. Ed. 475; *Converse* v. *Hamilton,* 224 U. S. 243, 32 Sup. Ct. 415, 56 L. Ed. 749, Ann. Cas. 1913D, 1292. But this being true, it is plain that a state cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to courts otherwise competent. The assumption that it could not do so was the basis of the decision in *International Text Book Co.* v. *Pigg,* 217

U. S. 91, 111, 112, 30 Sup. Ct. 481, 54 L. Ed. 678, 27 L. R. A. (N. S.) 493, 18 Ann. Cas. 1103, and the same principle was foreshadowed in *General Oil Co.* v. *Crain*, 209 U. S. 211, 216, 220, 228, 28 Sup. Ct. 475, 52 L. Ed. 754, and in *Fauntleroy* v. *Lum*, 210 U. S. 230, 235, 236, 28 S. Ct. 641, 52 L. Ed. 1039. See *Keyser* v. *Lowell*, 117 Fed. 400, 54 C. C. A. 574; *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142, 148, 28 Sup. Ct. 34, 52 L. Ed. 143, and cases cited. Whether the Illinois statute should be construed as the Mississippi Act was construed in *Fauntleroy* v. *Lum* was for the Supreme Court of the state to decide, but read as that court read it, it attempted to achieve a result that the Constitution of the United States forbade."

Although the judicial proceedings of Federal Courts are not within the terms of Const. U. S., Art. 4, Sec. 1, requiring a state to give full faith and credit to the judicial proceedings of a sister state, such proceedings must be accorded the same full faith and credit by the State Courts as would be required of judicial proceedings of another state.

Supreme Lodge, K. P., v. *Meyer*, — U. S. —, 44 Sup. Ct. 432, 68 L. Ed. 426.

The declaration of the Arkansas Supreme Court that under the Overdue Tax Act only interpretations of the tax laws of the state made by State Courts would be considered, contravenes the well-established principle that it is the duty of State Courts to give to the judgments of Federal Courts the same effect that the judgment would have

been entitled to if it had been ren ' red by a State Court.

Pittsburgh, C. C. & St. L. Ry. Co. v. *Long Island Loan & Trust Co.*, (1899) 172 U. S. 493, 19 S. Ct. 238.
Hancock Nat. Bank v. *Farnum*, (1900) 176 U. S. 640, 20 S. Ct. 506.
Deposit Bank of Frankfort v. *Frankfort*, (1903) 191 U. S. 499, 24 S. Ct. 154.

For the reasons submitted the judgment of the Supreme Court of the State of Arkansas should be reversed and the cause remanded to that court with directions either to render a judgment for the amount of taxes sued for or to direct the Chancery Court of the State to have a new assessment made on the full value basis of taxable property owned by defendants and located in Craighead County, Arkansas, according to the terms of Arkansas Corporation Overdue Tax Law and that to effect this end the prayer of petition for certiorari to this court should be granted.

Respectfully submitted,

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By J. S. UTLEY, *Attorney General.*

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Jonesboro, Arkansas,
September 8, 1924.